

Amendment No. 1 to HB1243

**Marsh
Signature of Sponsor**

AMEND Senate Bill No. 1372

House Bill No. 1243*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 66-11-126, is amended by deleting the section in its entirety and by substituting instead the following language:

Liens under this chapter, except as provided in subdivision (5)(A), shall be enforced only by the filing of an action seeking the issuance of an attachment in the manner as follows:

(1) For a prime contractor, the lien shall be enforced in a court of law or equity by attachment or in a court of general sessions having jurisdiction by a warrant for the sum claimed and writ of attachment, filed under oath, setting forth the facts, describing the real property, to be served on the persons whose interests the prime contractor seeks to attach and sell under process, and the owner or owners as defined in § 66-11-101 shall be given notice only of the filing of such warrant and writ of attachment;

(2) For a remote contractor, lien shall be enforced in a court of law or equity by attachment or in a court of general sessions having jurisdiction by a warrant for the sum claimed and writ of attachment, filed under oath, setting forth the facts, describing the real property, to be served on the persons whose interests the remote contractor seeks to attach and sell under process, and the owner or owners as defined in § 66-11-101 shall be given notice only of the filing of such warrant and writ of attachment. Within the discretion of the plaintiff or complainant, the warrant and writ of attachment may be served on the prime

Amendment No. 1 to HB1243

Marsh
Signature of Sponsor

AMEND Senate Bill No. 1372

House Bill No. 1243*

contractor, or remote contractor in any degree, with whom the plaintiff or complaintant is in contractual privity, but the owner or owners shall have the right to make the prime contractor or remote contractor a defendant by third-party complaint or cross-claim as is otherwise provided by law; and

(3) An action under this chapter is timely filed if a suit seeking the issuance of an attachment is filed within the applicable period of time, even if the attachment is not issued or served within the applicable period. The clerk of the court in which the suit is brought shall issue the attachment writ without obtaining fiat of a judge or chancellor;

(4) The clerk of the court to whom application for attachment is made shall, before issuing the attachment, require the plaintiff, the plaintiff's agent or attorney, to execute a bond with sufficient surety, payable to the defendant or defendants in the amount of one thousand dollars (\$1000) or the amount of the lien claimed, whichever is less, provided that a party may petition the court for an increase in the amount for good cause shown, and conditioned that the plaintiff will prosecute the attachment with effect or, in case of failure, pay the defendant or defendants all costs that may be adjudged against the defendant or defendants and all such damages as the defendant or defendants may sustain by the wrongful suing out of the attachment; and

(5)

(A) Where a bond has been provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, an attachment on the real property shall not be necessary

after the bond has been recorded, and the lien shall be enforced by an action on the bond before the circuit or chancery court, or before a court of general sessions where the amount is within its jurisdiction, filed under oath, setting forth the facts and describing the real property. Any such action shall be served on the principal of the bond and may, in the discretion of the plaintiff, be served on the owner or owner's agent, prime contractor, the remote contractor in any degree with whom the plaintiff is in contractual relation, and the surety on the bond, but the prime contractor, any remote contractor of any degree or the surety on the bond shall have the right to make others a defendant by third-party complaint or cross-claim as is otherwise provided by law.

(B) Where a lien is enforced pursuant to this subdivision (5), or after suit is commenced on a bond provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, the plaintiff shall, in case of failure to prosecute the suit with effect, pay the defendant or defendants all costs adjudged against the defendant or defendants and all the damages the defendant or defendants may sustain by the wrongful assertion of the lien.

(C) Where an action is brought pursuant to this subdivision (5), or after suit is commenced on a bond provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, the defendants shall retain all defenses to the validity of the underlying lien.

SECTION 2. This act shall take effect July 1, 2013 and shall apply to any lien based on work or labor that is performed on or after such date, the public welfare requiring it.